IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.301 OF 2007
CONNECTED WITH
COMPANY APPLICATION NO.396 OF 2007

In the matter of Sections 391 and 394 of the Companies Act, 1956

AND

In the matter of Scheme of Amalgamation between Tao Publishing Pvt. Ltd. and Zen Resorts Pvt. Ltd.

Tao Publishing Pvt. Ltd. .. Petitioner

WITH

COMPANY PETITION NO.302 OF 2007
CONNECTED WITH
COMPANY APPLICATION NO.397 OF 2007

In the matter of Sections 391 and 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation between Tao Publishing Pvt. Ltd. and Zen Resorts Pvt. Ltd.

Zen Resorts Pvt. Ltd. .. Petitioner

Ms.Alpana Ghone i/b Kanga & Co. for the petitioner.
Ms.K.V.Gautam, Dy. Official liquidator in C.P. No.301/07.
Ms.Heena Shah with Mr.G.C.Mishra for Regional Director in both matters.

CORAM : D.B.BHOSALE, J.
DATED : 27TH JULY, 2007.

P.C.:

1. Heard the learned counsel for the parties.

2. The sanction of the Court is sought to a Scheme of Amalgamation under Sections 391 to 394 of the Companies Act, 1956.

3. Counsel appearing on behalf of the Petitioners has stated before the Court that insofar as the Transferor is concerned : (i) all the equity shareholders have granted their consents; and (ii) there are no secured and unsecured creditors.

4. Insofar as the transferee is concerned, the Court has been informed by the learned Counsel that : (i) all the equity shareholders have granted their consents; (ii) there are no secured creditors; and (iii) all the unsecured creditors have granted their consents.

5. The Regional Director in their reply affidavit has stated that the scheme of amalgamation does not provide for transfer of staff and employees of the transferor company to the transferee company on transfer of the undertaking and business of the transferred company. He is also seeking directions to the transferee company to comply with the provisions of section 21 of the Companies Act in respect of filing of necessary forms with the Registrar of Companies in view of change in the name

of the transferee company. Having regard to the objections raised by the Regional Director in respect of the employees of the transferor company in exercise of the powers under section 392(1)(b), I modify the scheme in following terms:-

> "ADD THE FOLLOWING AS CLAUSE 4A TO THE SCHEME BEING EXHIBIT "F" TO THE PETITION.
>
> 4A. EMPLOYEES OF THE TRANSFEROR COMPANY.
>
> a) All the employees of Tao in-service on the date immediately preceding the Effective Date, shall become the employees of Zen Resorts on the Effective Date without any break or interruption in their service and upon the terms and conditions not less favourable than those subsisting with reference to Tao on the said date.
>
> b) As far as the Provident Fund, Gratuity Fund, Superannuation Fund and any other fund or funds (Special or otherwise) or trusts created or existing for the benefit of the employees of Tao if any, upon this Scheme, becoming finally effective Zen Resorts shall stand substituted for Tao for all purposes and intents whatsoever relating to the administration or operation of such schemes or funds or trusts in relation to the obligation to make contributions to the said funds in accordance with the provisions of such schemes, funds and trust deeds. It is the intent that all the rights, duties, powers and obligations of Tao in relation to such funds shall become those of Zen Resorts. It is clarified that the services of the employees of Tao will be treated as having been continuous for the purpose of the aforesaid funds or trusts and not interrupted."

6. Both the Regional Director and the Official Liquidator have stated that the scheme as proposed is

not contrary to the public interest or prejudicial to the interest of the shareholders or creditors.

7. There is no objection to the scheme and since all the requisite statutory compliances have been fulfilled, Company Petition No.301 of 2007 is made absolute in terms of prayer clauses (a) to (g).

8. Company Petition No.302 of 2007 is made absolute in terms of prayer clauses (a) to (f).

9. The Petitioners in both the petitions to pay costs of Rs.2500/- each to the Regional Director and to the Official Liquidator in Company Petition No.301 of 2007. Costs to be paid within four weeks from today.

10. Filing and issuance of drawn up order is dispensed with.

11. All authorities concerned to act on a copy of this order duly authenticated by the Registry.

(D.B.Bhosale, J.)